IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 25091 of 2006(K)

PETITIONER:

CHELLAPPA KURUP, S/O.NARAYANAN,
KALATHIL VEEDU, NADAKKUNNATHALA P.O.,
KARUNAGAPPALLY, KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, GENERAL ADMINISTRATION (FFPB) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**
2. **THE DISTRICT COLLECTOR, KOLLAM.**
3. **THE ADVISORY COMMITTEE, FREEDOM FIGHTERS PENSON.**
4. **THAHASILDAR, TALUK OFFICE, KARUNAGAPPALLY.**

BY GOVERNMENT PLEADER SRI. V.T.K. MOHANAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO. 25091/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE AGITATION SONG OF THE PETITIONER.

EXT.P.2: COPY OF THE CO-PRISONER CERTIFICATE DTD. 20/09/98 ISSUED BY MUNDATHARA GOPI.

EXT.P.3: COPY OF THE CO PRISONER CERTIFICATE DTD. 20/09/98. ISSUED BY UMMINI RAGHAVAN.

EXT.P.4: COPY OF THE APPLICATION FOR KERALA STATE FREEDOM FIGHTERS PENSION IN THE PRESCRIBED FORM DTD. 05/10/98 SUBMITTED BY THE PETITIONER.

EXT.P.5: COPY OF THE CALL LETTER DTD. 09/07/01.

EXT.P.6: COPY OF THE ORDER REJECTING THE CLAIM OF THE PETITIONER.

EXT.P.7: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.P.(C). NO. 28033/2003 DT. 07/04/2006.

EXT.P.8: COPY OF THE REPORT OF THE R.3. DTD. 28/06/06.

EXT.P.9: COPY OF THE FORWARDING LETTER OF THE R.2. DT. 28/06/06.

EXT.P.10: COPY OF THE CERTIFICATE ISSUED BY THE SUPERINTENDENT OF CENTRAL PRISON.

EXT.P.11: COPY OF THE CERTIFICATE ISSUED BY THE SUPERINTENDENT OF CENTRAL PRISON.

EXT.P.12: COPY OF THE APPLICATION ALONG WITH THE REJECTION ORDER DTD. 18/07/2006.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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W.P.(C).NO.25091 of 2006-K

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Dated this the 20th day of August, 2007

JUDGMENT

The petitioner is claiming Freedom Fighters' Pension under the Kerala Freedom Fighters' Pension Rules. The claim is based on his participation in the freedom struggle in Travancore. It is stated that he had participated in the attack of Karunagappalli Police Station in November 1946 and he was arrested and sent to Kollam Kasba jail. He underwent incarceration till 7.7.1947. He has produced the certificates issued by two prominent freedom fighters, viz., Shri Munduthara Gopi and Shri Ummini Raghavan. Earlier, his application was rejected. Ext.P4 is the photo copy of the application which was rejected as per Ext.P6. The same was under challenge in Writ Petition No.28033/2003 and by Ext.P7 judgment, this court directed the District Advisory Committee to make a fresh assessment of the case of the petitioner with notice to him referring to the documents produced by the petitioner. The Committee had directed to advert to the contentions taken by the petitioner and submit a report to the Government. Ext.P8 is the letter sent by the District Collector to the Government without recommending his case. This was served to the petitioner along with

Ext.P9.

2. The reasons stated in Ext.P8 are that the Committee was of the view that though the co-prisoners' certificates claimed imprisonment of 2 years and 5 years respectively, there is no corroborative evidence such as jail records of the certifiers in order to verify the genuinity of the claim of the petitioner with reference to the period of imprisonment of the certifiers.. It is concluded by the District Collector that the petitioner has failed to substantiate his claimed sufferings with acceptable documentary evidence. It is also stated that going by circular dated 31.12.1003, the application can be considered only on production of documentary evidence from official records such as warrant of arrest, court records and jail records showing the applicant's sufferings in connection with the freedom struggle. It is further stated that no convincing grounds are seen to condone the delay in submitting the application.

3. Along with I.A. No.11397/2007, the petitioner has produced Exts.P10 and P11 which are true extracts of the convict registers of the Central Prison, Trivandrum relating to the certifiers of the petitioner. Learned counsel for the petitioner points out that in the light of Exts.P10 and P11, the defect, if any, has been rectified.

4. The question is whether the petitioner is eligible for grant of

pension. Going by Ext.P3 judgment, the District Advisory Committee was directed to make a fresh assessment of the case of the petitioner. Now that the petitioner is in possession of Exts.P10 and P11, in the interest of justice, the petitioner will be allowed a fresh opportunity to produce those documents before the District Advisory Committee, the third respondent herein. On production of the same, the District Advisory Committee will reconsider the matter in accordance with the scheme itself. In view of the clear directions in Ext.P7 judgment that it is for the District Advisory Committee to make afresh assessment of the case of the petitioner, the District Collector was not right in taking the view that the application of the petitioner is delayed and in the light of the circular dated 31.12.1993, his claim can be considered only on production of official records such as warrant of arrest, court records, jail records, etc. Such a contention was not taken before this court when Ext.P7 judgment was rendered and hence the reliance placed on the said circular is not correct. The District Advisory Committee will have to consider the matter on merits without relying upon the technicalities like circular dated 31.12.1993, etc. Further, the circular cannot restrict the scope of the scheme also.

5. Therefore, Ext.P8 is quashed. If the petitioner produces the relevant documents or any other materials in support of his claim, within a

period of one month from today before respondents 2 and 3, the District Advisory Committee will assess the same and forward a report to the District Collector with appropriate recommendation. Learned counsel for the petitioner points out that going by the decision of this court in **Union of India v. Peter Devassia** (2003 (1) KLT 467 (FB)), as far as the extract of the convict register of Shri Munduthara Gopi, no objection can be taken. Learned counsel is well founded in his submission. The petitioner shall be offered an opportunity of hearing also by the District Advisory Committee. The Advisory Committee shall take a decision within two months of the date of production of a copy of this judgment. The competent authority shall issue orders on the application for pension within four months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above. No costs.

(T.R. Ramachandran Nair, Judge.)

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